

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MAUREEN P. KRAUSE,

Plaintiff,

v.

ORDER

03-CV-0730A

BUFFALO and ERIE COUNTY WORKFORCE
DEVELOPMENT CONSORTIUM, INC.,
BUFFALO and ERIE COUNTY WORKFORCE
INVESTMENT BOARD, INC.,
JOEL A. GIAMBRA, County Executive of the
County of Erie, State of New York,
CARL J. CALABRESE, Deputy County Executive
of the County of Erie, State of New York,
JAMES FINAMORE, Executive Director of the Buffalo
and Erie County Workforce Investment Board, Inc.,
EUGENE F. BAGEN, Director of Business Services for
the Buffalo and Erie County Workforce Development
Consortium,
JAMES F. BRATEK, Director of Information Services &
Technology for the Buffalo and Erie County Workforce
Development Consortium, and
RONALD J. BAIA, Director of Greater Buffalo Works,

Defendants.

This case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1), on February 3, 2004. On August 12, 2004, defendants Buffalo and Erie County Workforce Development Consortium, Inc., Buffalo and Erie County Workforce Investment Board, Inc., James Finamore, Eugene F. Bagen, James F. Bratek, and Ronald J. Baia ("Workforce Defendants") filed a motion to dismiss the complaint (Doc. No. 13) and on August 17, defendants Joel

A. Giambra and Carl J. Calabrese ("County Defendants") filed a motion to dismiss the complaint (Doc. No. 20). On March 22, 2005, both the Workforce Defendants and the County Defendants filed motions for summary judgment (Doc. Nos. 30 and 34), and in June 2005, the County Defendants and the Workforce Defendants filed motions to strike (Doc Nos. 46 and 47).

On September 29, 2005, Magistrate Judge Foschio filed a combined Decision and Order and Report and Recommendation, where he: (1) recommended that the Workforce Defendants' motion to dismiss the Complaint as time-barred should be denied (Doc. No.13); (2) recommended that the Workforce Defendants' (Doc. No. 30) and the County Defendants' (Doc. No. 34) motions for summary judgment be granted as to plaintiff's claim for punitive damages but denied in all other respects; and (3) denied the motions to strike filed by the County Defendants (Doc. No. 46) and the Workforce Defendants (Doc. No. 47).

Both the County Defendants and the Workforce Defendants filed objections to the Decision and Order and Report and Recommendation, and plaintiff filed a response thereto. Oral argument on the objections was held on December 7, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed defendants' objections and Magistrate Judge Foschio's Decision and Order. Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge Foschio's Decision and Order is neither clearly erroneous nor contrary to law.

Accordingly, the Court affirms the Decision and Order. Further, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, the Court hereby: (1) denies the Workforce Defendants' motion (Doc. No.13) to dismiss the Complaint as time-barred; (2) grants the Defendants' motions for summary judgment as to plaintiff's punitive damages claim, but denies the motions for summary judgment (Docs. No. 30 and 34) in all other respects.

The parties shall appear in Court on May 3, 2006, at 9:00 a.m., for a meeting to set a trial date.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 28 , 2006